S.B. CIVIL MISC. APPEAL NO. 1610/2006
(Smt.Pushpa Devi & anr. Vs. Dinesh Kumar & ors.)

Date of Order :: 29th March 2007

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. H.S.Shrimalee for the appellants

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By way of this appeal against the common award dated 20.10.2004 made by the Motor Accidents Claims Tribunal, Barmer insofar it relates to Claim Case No.15/2002 the claimants seek enhancement over the amount of Rs.2,63,000/- together with interest at the rate of 6% per annum awarded by the Tribunal as compensation on account of accidental death of about 55 years old Shantilal, husband of appellant No.1 and father of appellant No.2 and respondent No.4.

For quantification of compensation to be awarded to the wife and two major sons of the victim Shantilal, the Tribunal has noticed the assertions of claimants about the age of the victim at 55 years and his income at Rs.75,000/-per annum from cotton yarn trading business in the name and style of M/s. Oswal Trading at Meerut, said to have been closed down upon his demise. The Tribunal has referred to the income tax

return Ex.12 produced by the claimants in relation to the income of the deceased for the accounting year 2000-2001 (the date of accident being 05.12.2001), has noticed the net income of the deceased shown at Rs.72,919/- in the said return Ex.12, and has observed that for the purpose of proving the income minimum three previous income tax returns ought to have been produced and merely on the basis of the document Ex.12 it could not be taken proved that income of the deceased was Rs.72,919/- per annum. Hence, the Tribunal has put an estimate on the annual income of the deceased at Rs.48,000/-; and deducting one-third wherefrom has taken annual economic dependency of the claimants at Rs.32,000/-; and with reference to the age of the victim at 55 years has applied the multiplier of 8, to assess pecuniary loss at Rs.2,56,000/-; and allowing Rs.2,000/- towards funeral expenses and Rs.5,000/- towards loss of love and affection has allowed compensation in the sum of Rs.2,63,000/-; and has allowed interest at the rate of 6% per annum from the date of filing of claim application. The Tribunal has allowed the entire amount of compensation to the wife of the deceased with the observation that the claimants Nos.2 and 3 were the major sons of the deceased and could not be taken to be his dependents.

Assailing the award aforesaid as low and inadequate, it

has been contended by learned counsel for the appellants that the Tribunal has been in error in not taking the income of the deceased at Rs.75,000/- per annum though his income in the last accounting year has been established at about Rs.73,000/- by the return Ex.12; that application of multiplier of 8 is on the lower side as the deceased was in settled business and the entire family was dependent on him with one son of the deceased (appellant No.2) being physically handicapped; and that the Tribunal has allowed meagre amount towards non-pecuniary loss at Rs.5,000/-.

Having given a thoughtful consideration to the submissions made by learned counsel for the appellants and having examined the record in its totality, this Court is satisfied that the amount awarded by the Tribunal cannot be said to be lower than that of just compensation admissible in the fact situation of the present case; and this appeal does not merit admission.

So far the income of the deceased is concerned, though the observations made by the Tribunal of the requirement of production of three income tax returns cannot be approved as a principle of universal application; and in the facts and circumstances of the case, with reference to the evidence adduced by the claimants that deceased was engaged in the business for about 20-25 years, there does not appear any

reason not to accept the return Ex.12 as produced by the claimants as correct. However, upon accepting the return Ex.12 as correctly depicting the last income of the deceased, this Court is of opinion that even the estimate put by the Tribunal on his annual income at Rs.48,000/-for the purpose of considering the loss of contribution to the claimants turns out to be an estimate rather on the higher side.

Salient features of the said return Ex.12 are that the total income of the deceased for the accounting year 2000-2001 has been shown at Rs.73,004/- comprising of income: (i) 'from business or profession' at Rs.26,646/-; and (ii) 'from other sources' at Rs.46,358/-. Thus, accepting the case of the claimants on its face value, it is but apparent that the net annual business income of the deceased was only of Rs.26,646/-; and the other component of income, of Rs.46,358/-, was not from business but from 'other sources'. Such 'other sources' of income have not at all been explained by the claimants in their evidence though the wife of the deceased, Smt.Pushpa Devi has deposed as AW-1, his son Vikas as AW-2 and his brother-in-law, Mishrimal as AW-3. On the facts and in the circumstances of the case where the deceased has been shown engaged only in business activity as a trader, his income from ‘other sources’ as shown in his tax return could only be inferred to be that generated from

investments or securities or the like. As a necessary corollary, the aspect of a larger part of such component of income from 'other sources' retaining itself to the claimants cannot be ignored. Then, the claimants have suggested total closure of the business but have failed to substantiate such assertion with cogent documentary evidence; and some part of the business income also retaining itself to the claimants cannot be ruled out.

In the aforesaid view of the matter, even when the return Ex.12 is taken on its face value, this Court is of opinion that the estimate on the income of the deceased at Rs.48,000/- per annum for the purpose of assessing the loss of the claimants is but on the higher side. Then, looking to the age of the deceased at 55 years and that of his sons respectively at 24 and 21 years, even if the elder son of the deceased be accepted to be handicapped a person, though no cogent evidence in that regard has been adduced, deduction of only one-third on personal expenditure of the deceased and application of multiplier of 8 has ultimately led only to excessive assessment of pecuniary loss.

Thus, when the assessment of pecuniary loss at Rs.2,56,000/- could only be said to be higher than that of just compensation admissible in this case, even though the Tribunal has been restrictive while awarding the amount of

general damages, in the ultimate analysis, the award as made by the Tribunal in the sum of Rs.2,63,000/- cannot be said to be too low or grossly inadequate; and this appeal for enhancement turns out to be meritless.

The appeal fails and is, therefore, dismissed summarily.

MK **(DINESH MAHESHWARI), J.**